

HOUSE BILL NO. 784

INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT DECOUPLING CERTAIN FEDERAL DEDUCTIONS FROM MONTANA INDIVIDUAL INCOME TAXES, CORPORATE LICENSE TAXES, AND CORPORATION INCOME TAXES; PROVIDING THAT THE DEDUCTIONS MAY NOT BE USED TO DETERMINE NET OPERATING LOSS CARRYBACKS AND CARRYFORWARDS; AMENDING SECTIONS 15-30-117, 15-30-121, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-117, MCA, is amended to read:

"15-30-117. Net operating loss -- computation. A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1986, {26 U.S.C. 172}, ~~or as that section may be labeled or amended~~ except that the net operating loss determined under section 172(c) of the Internal Revenue Code, {26 U.S.C. 172(c)}, means taxable income, as defined in 15-30-101, without regard to the amount deducted for federal income tax purposes, as provided in section 199 of the Internal Revenue Code, 26 U.S.C. 199, computed with the modifications specified in section 172(d) of the Internal Revenue Code, {26 U.S.C. 172(d)}, as they relate to items provided for in this chapter."

Section 2. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); ~~and~~

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701; and

(vi) the amount deducted for federal income tax purposes as provided in section 199 of the Internal Revenue Code, 26 U.S.C. 199;

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

1 (II) \$3,600 in the case of two qualifying individuals; and

2 (III) \$4,800 in the case of three or more qualifying individuals;

3 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which
4 the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of
5 the excess of the combined adjusted gross income over \$18,000;

6 (vi) for purposes of this subsection (1)(c):

7 (A) married couples shall file a joint return or file separately on the same form;

8 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are
9 deductible only if:

10 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that
11 they are a direct result of the employment; or

12 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

13 (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate
14 maintenance may not be considered as married;

15 (D) the deduction for employment-related expenses must be divided equally between the spouses when
16 filing separately on the same form;

17 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and
18 payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible
19 as employment-related expenses;

20 (d) in the case of an individual, political contributions determined in accordance with the provisions of
21 section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that
22 ended December 31, 1978;

23 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed
24 as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

25 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the
26 conditions set forth in 15-30-156;

27 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
28 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

29 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's
30 dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify

1 for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

2 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion
3 of contributions made under this subsection.

4 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity
5 is a qualified charitable gift annuity as defined in 33-20-701.

6 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
7 81-7-118, or 81-7-201.

8 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value,
9 not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or
10 apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary
11 school located in Montana if:

12 (a) the contribution is made no later than 5 years after the manufacture of the donated property is
13 substantially completed;

14 (b) the property is not transferred by the donee in exchange for money, other property, or services; and

15 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the
16 property and representing that the use and disposition of the property will be in accordance with the provisions of
17 subsection (2)(b).

18 (3) In the case of a regulated investment company or a fund of a regulated investment company, as defined
19 in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that section may
20 be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal
21 Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered, except that the deduction
22 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this
23 chapter when earned by the regulated investment company. For the purposes of computing the deduction for
24 dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, 26 U.S.C.
25 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A regulated investment company is
26 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code
27 of 1986, 26 U.S.C. 243 through 245, as those sections may be amended or renumbered.

28 (4) In determining taxable net income, a deduction is not allowed for the amount deducted for federal
29 income tax purposes as provided in section 199 of the Internal Revenue Code, 26 U.S.C. 199."

1 **Section 4.** Section 15-31-119, MCA, is amended to read:

2 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss deduction
3 is the aggregate of net operating loss carryovers to the ~~taxable tax~~ tax period plus the net operating loss carrybacks
4 to the ~~taxable tax~~ tax period.

5 (2) The term "net operating loss" means the excess of the deductions allowed by this section over the
6 gross income, without regard to the amount deducted for federal income tax purposes as provided in section 199
7 of the Internal Revenue Code, 26 U.S.C. 199, with the modifications specified in subsection ~~(6)~~ (5).

8 ~~(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss~~
9 ~~must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss~~
10 ~~and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the~~
11 ~~loss.~~

12 ~~(4)(3)~~ A net operating loss for any ~~taxable tax~~ tax period ending after December 31, 1975, in addition to being
13 a net operating loss carryback to each of the three preceding ~~taxable tax~~ tax periods, must be a net operating loss
14 carryover to each of the seven ~~taxable tax~~ tax periods following the ~~taxable tax~~ tax period of the loss.

15 ~~(5)(4)~~ Except as provided in subsection ~~(44)~~ (10), the portion of the loss that must be carried to each of
16 the other ~~taxable tax~~ tax years must be the excess, if any, of the amount of the loss over the sum of the net income
17 for each of the prior ~~taxable tax~~ tax periods to which the loss was carried. For purposes of this subsection, the net
18 income for the prior ~~taxable tax~~ tax period must be computed with the modification specified in subsection ~~(6)(b)~~ (5)(b)
19 and by determining the amount of the net operating loss deduction without regard to the net operating loss for the
20 loss period or any ~~taxable tax~~ tax period after the loss period, and the net income ~~so~~ that is computed may not be
21 considered to be less than zero.

22 ~~(6)(5)~~ The modifications referred to in subsection (2) are as follows:

23 (a) The net operating loss deduction may not be allowed.

24 (b) The deduction for depletion may not exceed the amount that would be allowable if computed under the
25 cost method.

26 (c) Any net operating loss carried over to any ~~taxable tax~~ tax year must be calculated under the provisions of
27 this section effective for the ~~taxable tax~~ tax year for which the return claiming the net operating loss carryover is filed.

28 ~~(7)(6)~~ A net operating loss deduction ~~may be~~ is allowed only with regard to losses attributable to the
29 business carried on within the state of Montana.

30 ~~(8)(7)~~ In the case of a merger of corporations, the surviving corporation ~~may is~~ is not ~~be~~ allowed a net

operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.
In the case of a consolidation of corporations, the new corporate entity ~~may~~ is not ~~be~~ allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

~~(9)(8)~~ Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

~~(10)(9)~~ The net operating loss deduction must be allowed with respect to ~~taxable~~ tax periods.

~~(11)(10)~~ A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

~~(12)(11)~~ Notwithstanding any other provision of this section, the net operating loss deduction is not allowed in the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

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